REMARKS

In the foregoing Listing of Claims, Applicants cancel claims 22 – 25 and amend claim 18 to remove the "preventing" limitation and by changing the word "administering" to "ingesting." Applicants respectfully request that the foregoing amendments be entered into the application, because they place the application in condition for allowance in accordance with 37 C.F.R. §1.116(b). Applicants respectfully request reconsideration and allowance of the invention defined in claims 18 – 22 for reasons that follow.

Applicants desire to express thanks to Examiner Elli Peselev for the courtesies extended the undersigned in a telephone interview on August 9, 2010. During the interview, the foregoing amendments to claim 18 were discussed, together with the canceling of claims 22 – 25 from the application. The Examiner stated that amended claim 18, especially with changing the word "administering" to "ingesting," appears to overcome the prior art of record. The Examiner noted that "ingesting" is disclosed on page 15 of the Specification.

§112 Rejection

The Office Action included a rejection of claims 18 – 21 under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for "alleviating" spots or freckles created on skin, does not reasonably provide enablement for "preventing" spots or freckles created on skin (Off. Act. p. 2). While applicants do not agree with the position set forth by the Examiner in this rejection, Applicants amended claim 18 above to remove the "preventing" limitation. Since claim 18 no longer requires "preventing" spots and freckles created on the skin, there is no longer any issue concerning whether or not the Specification provides an enabling disclosure for such "preventing" spots or freckles created on skin. In other words, this rejection is now moot.

At least for these reasons, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 18 – 21 under 35 U.S.C. §112, first paragraph, which was set forth in the outstanding Office Action.

§ 102(b) Rejection

The Office Action included a rejection of claims 18 – 25 under 35 U.S.C. §102(b) as being anticipated by Matsumoto (EP 1 208 755 A1). The Examiner alleged that Matsumoto encompasses administering anthocyan to subjects in need of "prevention" of spots or freckles created on the skin (Off. Act. p. 4, ll. 7 – 10).

While applicants do not agree with the position set forth by the Examiner in this rejection, Applicants amended claim 18 above to remove the "preventing" aspect thereof. Since claim 18 no longer requires "preventing" spots and freckles created on the skin, any alleged teaching in Matsumoto concerning "preventing" spots or freckles created on skin is not pertinent to the patentability of the presently claimed invention. In other words, this rejection is also now moot.

Applicants' claim 18 defines a method of inhibiting tyrosinase activity in a subject in need of alleviating spots and freckles created on skin, which comprises ingesting a composition comprising an effective amount of anthocyan for alleviating spots and freckles created on skin to the subject. Applicants respectfully submit that the presently claimed method of inhibiting tyrosinase activity in a subject in need of alleviating spots and freckles created on skin are not and cannot be inherent within the teachings of Matsumoto. Therefore, the presently claimed method as defined in claims 18 – 21 cannot be anticipated by Matsumoto within the meaning of 35 U.S.C. §102.

Applicants respectfully submit that the presently claimed use of inhibiting tyrosinase activity in a subject in need of alleviating spots and freckles created on skin, as required in present claims 18 – 21, is not related to the uses of improving visual function, improving body fluidity, and/or lowering blood pressure as discussed in Matsumoto, and thus is a new use over Matsumoto.

Applicants speculate that the mechanism of inhibiting tyrosinase is as follows. When epidermis cells are irradiated with ultraviolet light, a signaling substance that enhances the synthesis of melanine is produced. The signaling substance binds to melanoAmdtcytes. The melanocytes are then activated and grow, and produce and activate tyrosinase that is a melanine-producing enzyme. The activated tyrosinase converts tyrosine to DOPA (dihydroxyphenylalanine) in a living body and then dopaquinone which stimulates the production of melanine is produced. Accordingly, inhibiting tyrosinase inhibits the production of DOPA and dopaquinone, which in turn inhibit the production of melanine.

The teachings of Matsumoto never disclose nor suggest the tyrosinase-inhibiting activity of anthocyanin and any relationship between tyrosinase-inhibiting activity and the production of melanine in a subject in need of alleviating spots and freckles created on skin as required in present claims 18 to 21. In addition, these properties or functions of the invention defined in claims 18 to 21 are not related to the uses of improving visual function, improving body fluidity, and/or lowering blood pressure as proposed by Matsumoto, and thus is a new use or utility over Matsumoto. At least for these reasons, Applicants respectfully submit that the inventions of claims 18 to 21 are not anticipated by Matsumoto, and thus, are patentable thereover.

§ 103(a) Rejection

Claims 22 – 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Seishurou (JP – A 62-077328) on page 4 of the Office Action. Again, while Applicants do not agree with the Examiner's position, the foregoing amendments cancel claims 22 – 25 from the application. Accordingly, this rejection is now moot.

Conclusion

Applicants respectfully submit that, as described above, the cited prior art does not show or suggest the presently claimed method. Further, Applicants respectfully submit that the presently claimed invention is supported in the present Specification. Therefore, Applicants respectfully submit that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the Examiner is invited to contact the undersigned by telephone.

Please charge any unforeseen fees that may be due to Deposit Account No. 50 – 1147.

Respectfully submitted,

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